

MONTANA LEGISLATIVE HISTORY

Chapter 492 19 99

Bill H _____ S 96

Original bill & history ✓c

H. Committee on Natural Res.

Hearing Date(s) 3-8 ✓c

3-10 ✓c

_____ c

_____ c

Date Out _____ c

S. Committee on Local Gov

Hearing Date(s) 1-12 ✓c

Free Conf c

4-12 ✓c

_____ c

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendant information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

Bill Type - Number: SB 96**Short Title:** Modify provisions governing protest of changes in municipal zoning regulations**Primary Sponsor:** Spook Stang**Bill Actions - Current Bill Progress:** Became Law**Bill Action Count:** 62

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	04/29/1999			
(S) Signed by Governor	04/27/1999			
(S) Transmitted to Governor	04/22/1999			
(H) Signed by Speaker	04/21/1999			
(S) Signed by President	04/21/1999			
(S) Returned from Enrolling	04/21/1999			
(C) Sent to Printing	04/20/1999			
(S) Sent to Enrolling	04/20/1999			
(H) 3rd Reading Free Conference Committee Report Adopted	04/19/1999	83	17	
(H) Scheduled for 3rd Reading	04/19/1999			
(H) 2nd Reading Free Conference Committee Report Adopted	04/17/1999	82	15	
(H) Scheduled for 2nd Reading	04/17/1999			
(S) 3rd Reading Free Conference Committee Report Adopted	04/14/1999	49	1	
(S) Scheduled for 3rd Reading	04/14/1999			
(S) 2nd Reading Free Conference Committee Report Adopted	04/13/1999	49	0	
(S) Scheduled for 2nd Reading	04/13/1999			
(S) Free Conference Committee Report Received	04/12/1999			
(H) Free Conference Committee Report Received	04/12/1999			
(S) Hearing	04/12/1999			(S) Free Conference
(H) Free Conference Committee Appointed	04/08/1999			(H) Free Conference
(S) Free Conference Committee Appointed	04/07/1999			

(S) Referred to Committee	04/07/1999			(S) Free Conference
(S) 2nd Reading House Amendments Not Concurred	04/06/1999	49	1	
(S) Scheduled for 2nd Reading	04/06/1999			
(H) Returned to Senate with Amendments	03/29/1999			
(H) 3rd Reading Concurred	03/29/1999	79	21	
(H) Scheduled for 3rd Reading	03/29/1999			
(H) 2nd Reading Concurred	03/27/1999	84	11	
(H) Scheduled for 2nd Reading	03/27/1999			
(H) Scheduled for 2nd Reading	03/26/1999			
(H) Committee Report--Bill Concurred as Amended	03/11/1999			(H) Natural Resources
(C) Sent to Printing	03/11/1999			
(H) Committee Executive Action--Bill Concurred as Amended	03/11/1999	16	4	(H) Natural Resources
(H) Hearing	03/08/1999			(H) Natural Resources
(H) Rereferred to Committee	03/03/1999			(H) Natural Resources
(H) Hearing Canceled	03/01/1999			(H) Local Government
(H) Referred to Committee	02/16/1999			(H) Local Government
(H) First Reading	02/16/1999			
(S) Transmitted to House	01/23/1999			
(S) 3rd Reading Passed	01/23/1999	39	7	
(S) Scheduled for 3rd Reading	01/23/1999			
(S) 2nd Reading Passed	01/22/1999	37	12	
(S) Scheduled for 2nd Reading	01/22/1999			
(S) Committee Report--Bill Passed as Amended	01/21/1999			(S) Local Government
(S) Committee Executive Action--Bill Passed as Amended	01/21/1999	8	3	(S) Local Government
(S) Hearing	01/12/1999			(S) Local Government
(S) Referred to Committee	01/04/1999			(S) Local Government
(S) First Reading	01/04/1999			
(C) Introduced Bill Text Available Electronically	12/21/1998			

(S) Introduced	12/21/1998			
(C) Pre-Introduction Letter Sent	12/09/1998			
(C) Draft in Assembly/Executive Director Review	12/09/1998			
(C) Draft in Final Drafter Review	12/08/1998			
(C) Bill Draft Text Available Electronically	12/08/1998			
(C) Draft in Input/Proofing	12/08/1998			
(C) Draft to Drafter/Edit Review (CAJ)	12/08/1998			
(C) Draft in Legal Review	12/07/1998			
(C) Draft to Requester for Review	12/07/1998			
(C) Draft Taken Off Hold	12/07/1998			
(C) Draft On Hold	11/30/1998			
(C) Draft On Hold	11/19/1998			
(C) Draft Request Received	11/10/1998			

SENATE BILL NO. 96

INTRODUCED BY STANG S, COCCHIARELLA V, GROSFIELD L
BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT MODIFYING PROVISIONS GOVERNING PROTEST OF CHANGES TO MUNICIPAL ZONING REGULATIONS; AND AMENDING SECTION 76-2-305, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 76-2-305, MCA, is amended to read:

"76-2-305. Alteration of zoning regulations -- protest. (1) ~~Such regulations, restrictions, and boundaries~~ A regulation, restriction, and boundary may ~~from time to time~~ be amended, supplemented, changed, modified, or repealed. The provisions of 76-2-303 relative to public hearings and official notice ~~shall~~ apply equally to all changes or amendments.

(2) ~~An amendment may not become effective except upon a favorable vote of three-fifths of all the members of the city or town council or legislative body of the municipality~~ In case, however, of a ~~if~~ a protest against ~~such a~~ change pursuant to subsection (1) is signed by the owners of ~~20%~~ 40% or more ~~of either of:~~

(a) ~~the area of the lots included in such any proposed change; or~~

(b) ~~of those lots immediately adjacent in the rear thereof extending 150 feet therefrom~~ from a lot included in a proposed change; or

(c) ~~of those lots adjacent on either side thereof~~ of a lot included in a proposed change and within the same block; or

(d) ~~of those lots directly opposite thereof~~ of any lots included in a proposed change extending 150 feet from the street frontage of ~~such those~~ opposite lots; ~~such amendment shall not become effective except by the favorable vote of three-fourths of all the members of the city or town council or legislative body of such municipality.~~

NEW SECTION. Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

- END -

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **CHAIRMAN MIKE SPRAGUE**, on January 12, 1999 at 3:00 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. Mike Sprague, Chairman (R)
Sen. Ken Miller, Vice Chairman (R)
Sen. Bill Glaser (R)
Sen. Don Hargrove (R)
Sen. John C. Bohlinger (R)
Sen. Duane Grimes (R)
Sen. Dale Mahlum (R)
Sen. Dorothy Eck (D)
Sen. Jon Tester (D)
Sen. J.D. Lynch (D)
Sen. Chris Christiaens (D)

Members Excused: None.

Members Absent: None.

Staff Present: Mary Vandebosch, Legislative Branch
Jodi Pauley, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 95, 1/06/1999; SB 96,
1/06/1999; SB 97, 1/06/1999
Executive Action: SB 95 DP

HEARING ON SB 95

Sponsor: SENATOR LORENTS GROSFIELD, SD 13, Big Timber

Gloria Paladichuk, City of Glendive and Richland Co., said that Montana and North Dakota shared money on a project to build a bridge and this is a very good bill to share dollars within the county and city.

{Tape : 1; Side : A; Approx. Time Counter : 3:12 p.m.}

Opponents Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

SENATOR GROSFIELD closed on SB 95.

EXECUTIVE ACTION ON SB 95

Motion/Vote: SEN. LYNCH moved that SB 95 DO PASS.
Motion passed unanimously 11-0.

HEARING ON SB 96

Sponsor: SENATOR BARRY "SPOOK" STANG, SD 36, St. Regis

Proponents:

Jerry Sorensen, EQC
Mike Kadus, Mayor of Missoula
Steve Snezek, Assoc. of Realtors
Anne Hedges, MT Environmental Information Center
Byron Roberts, MT Building Industry Assoc.

Opponents: None

Opening Statement by Sponsor:

VICKI COCCHIARELLA, SD 32, Missoula opened for SENATOR BARRY "SPOOK" STANG, on SB 96.

Proponents Testimony:

Jerry Sorensen, EQC, said this bill was drafted as a concern for those communities who are having problems getting new development within their communities. Many cities have old zoning regulations and it is very difficult to get these changed. Currently if 20 percent of the citizens protest a zoning change it can be stopped

and then it requires a 75 percent vote of city council to over-ride and allow for zoning changes. This bill lessens those restrictions and helps with development within city boundaries. Changes within the bill include changing the protest provision to 40 percent of the neighbors and the over-ride of the city council to 60 percent. He submitted a letter of testimony from Nicholas Kaufman. **EXHIBIT(los08a01)**

Mike Kadus, Mayor of Missoula, said a 75 percent majority is really hard to overcome. Cities are changing and growing and zoning needs to be able to change. As urban areas spread out, it is critical to add density to the areas that are closer to the core of the city to provide services in an efficient way. This bill is not anti-neighborhood. Currently, just one neighbor can put a stop to growth in the community while the other neighbors may be in support of it. Thus, we end up with a stagnant core rather than trying to create change and allow for our cities to grow. He suggest some changes to the bill. Subsection 2, line 15 where it says it takes three-fifths of all the members of city council, he suggested changing it to the city council members present at the meeting. He said often times there are members gone and if they vote, the absent member's vote count as a no vote and this is not fair. He also said Subsection (a) protects the property owner, subsection (b), (c), and (d) protect the neighbor. He said to eliminate those and have a subsection (b) that read anybody can protest that has property within 150 of the parcel that is involved in a zoning change. Property owners have rights, but the question is how far should we let those rights be and who is it going to affect.

{Tape : 1; Side : A; Approx. Time Counter : 3:30 p.m.}

Steve Snezek, Assoc. of Realtors, said if they as a community want to prevent urban sprawl they need to encourage in-fill development. This bill makes zone changes easier and if a developer cannot get changes within the city he will go to the county and this only increases urban sprawl.

Anne Hedges, MT Environmental Information Center, said this bill still addresses the concern of property owners and will help avoid sprawl. Citizens still have to participate and can protest zones etc. The super majority is still required to get the zone changed.

Byron Roberts, MT Building Industry Assoc., said this bill will encourage urban in-fill and get people living back in cities and make zone changes possible in cities.

Opponents Testimony:

Missoula City Council submitted a letter of opposition.
EXHIBIT(1os08a02)

Questions from Committee Members and Responses:

SENATOR DUANE GRIMES asked during the last year what impact would this bill have had on zoning decisions. Jerry Sorensen said an example is if a couple living in Missoula wanted to do some development at a higher density than what the zoning called for in the neighborhood, it would only take two neighbors to protest it and if the super-majority of the Missoula Council didn't pass it, it was voted down. A lot of people who might want to do creative development and attract people to move into town won't go forward because of risk and cost.

SENATOR GRIMES asked how this would affect the zoning issues around the state concerning casinos. Mr. Sorensen said he didn't know for sure.

SENATOR GRIMES asked what kind of concerns were raised with the 150 foot radius. SENATOR COCCHIARELLA said these issues have been gone over in interim, extensively, and they don't feel like some of the proposed amendment that Mayor Kadus is addressing should be put in. One example is the three-fifths majority should not be amended. The 150 radius they feel is appropriate.

SENATOR GRIMES said he would be interested in the incentives of this bill and how it would affect zoning plans that have happened in the last year and who this is targeted for. Major controversial issues in urban areas would have been changed because of this bill. He asked how would those issues have been different if the 150 foot limit was changed etc. SENATOR STANG said SB 97 addressed this in that it won't take effect until the year 2001. Cities like Missoula that already have the existing plan can have time to work on those problems.

SENATOR CHRIS CHRISTIAENS asked how this would have affected Helena as they have had some very controversial issues in the past. Linda Stoll, MT Assoc. of Planners, said she didn't know for sure but would check with the city of Helena.

SENATOR CHRISTIAENS asked about the zoning of casinos. SEN. GROSFIELD said he didn't know for sure and if this bill references zoning for casinos or not.

SENATOR DOROTHY ECK said she is concerned about (a)-(d) and how these description apply to other situations. If they are changing something that is standard to local governments, they should know that they are doing this.

SENATOR BILL GLASER asked if this bill had been in place would the proposed Claus subdivision in the Billings Heights been easier. **CHAIRMAN SPRAGUE** said the city council was in favor of the outrage that came from the citizens rather than the city council. He said he didn't think this bill would of had any effect on this.

SENATOR GLASER said this bill is raising the requirements of the level of protest needed for zoning. It is raising the protest level from 20 to 40 percent.

SENATOR MAHLUM used the example of 5 people living in an area and right now it would only take one person to protest a subdivision. Under this bill it would take two.

SENATOR GRIMES asked **Rich Weddle, MT Department of Commerce** to clarify some of the questions that they have discussed. **Rich Weddle** said in regard to casinos, this bill would make it easier to get a re-zoning for casinos.

SENATOR GRIMES asked what effect would this have had on the development on the hill in Helena. **Mr. Weddle** said that wasn't a zoning issue but a subdivision issue.

SENATOR GRIMES asked if the subdivision that happened in the gulch would of been easier under this bill. **Mr. Weddle** said he was not sure, but used the example that in Billings, 24th street was widened and the traffic level increased. There was some residential sights on one side of that and the owners sought a re-zoning. The property owners behind them protested. Because of this protest the city council couldn't get the votes needed. The property owners went to court and sued the city and the city lost.

CHAIRMAN SPRAGUE said this bill deals with cities and towns and not counties.

SENATOR CHRISTIAENS said with the passage of this bill it would make it easier to place a pre-release center in Helena for example.

Closing by Sponsor:

SENATOR STANG said the 150 feet is current law and he closed on SB 96.

{Tape : 1; Side : B; Approx. Time Counter : 3:53 p.m.}

HEARING ON SB 97

Sponsor: SENATOR BARRY "SPOOK" STANG, SD 36, St. Regis

Proponents:

Jerry Sorensen, EQC
VICKI COCCHIARELLA, SD 32, Missoula
Steve Snezek, Assoc. of Realtors
Linda Stoll, MT Assoc. of Planners
Jane Jelinski, MACo
Gavin Anderson, Department of Commerce
Jani McCall, City of Billings
Bob Horne, MT Assoc. of Planners
Janet Ellis, MT Audubon
Anne Hedges, MT Environmental Information Center
Craig Sweet, MontPIRG
Byron Roberts, MT Building Industry Assoc
Denise Roth Barber, MT Sierra Club

Opponents:

Virginia Mueller, MT Assoc. of Registered Land Surveyors

Opening Statement by Sponsor:

SENATOR BARRY "SPOOK" STANG, SD 36, St. Regis opened on SB 97.
EXHIBIT(1os08a03)

Proponents Testimony:

Jerry Sorensen, EQC, spoke in favor of SB 97. EXHIBIT(1os08a04)

VICKI COCCHIARELLA, SD 32, Missoula, said the EQC is a bipartisan committee and they have spent hundreds of hours during the interim working on this. This issue which deals with growth and cities losing population was brought to them by the citizens of the state. She said this bill has no repealers, they are a list of amended sections that are in this bill. They tried to implement a growth policy which allows small counties, growing counties, etc., to have a mechanism to deal with fair issue locally and provide incentives to encourage counties to have a growth policy. It also makes sure that these decision of what counties want their areas to look like is not a subdivision fight

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN BILL TASH**, on March 8, 1999 at 3:00 P.M., in Room 437 Capitol.

ROLL CALL

Members Present:

Rep. Bill Tash, Chairman (R)
Rep. Hal Harper, Vice Chairman (D)
Rep. Cindy Younkin, Vice Chairman (R)
Rep. Rod Bitney (R)
Rep. Aubyn A. Curtiss (R)
Rep. Rick Dale (R)
Rep. Bill Eggers (D)
Rep. Ron Erickson (D)
Rep. David Ewer (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Dan McGee (R)
Rep. Douglas Mood (R)
Rep. Karl Ohs (R)
Rep. Bob Raney (D)
Rep. Bob Story (R)
Rep. Jay Stovall (R)
Rep. Carley Tuss (D)
Rep. Doug Wagner (R)

Members Excused: Rep. Scott J. Orr (R)

Members Absent: None.

Staff Present: Todd Everts, Legislative Branch
Deb Thompson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 96, SB 97, SB 235, 3/3/1999
Executive Action: HB 158 Move to Subcommittee

not mandatory. If there were specific areas they were concerned about, the provisions in the subdivision law may be adequate to deal with it. Or they could build a plan for that county that is very general and then could be followed up with a more site specific or neighborhood plan. This sets up the framework and gets the neighbors to deal with local issues at the local level but with some consideration for the goals of the county. This bill is optional and there may be a funding source for counties to do this if they want to exercise that option which will come with some technical assistance. It would be a benefit to a lot of eastern Montana counties to do some planning and get some funding help. If they are declining in growth, that issue should be addressed as well. **{Tape : 1; Side : B; Approx. Time Counter : 7.2 - 14.3}**

Closing by Sponsor: Sen. Stang closed. He stressed that the bill was not mandatory but optional. A growth policy can help plan ahead. The current process does not work but is reactionary. **{Tape : 1; Side : B; Approx. Time Counter : 14.3 - 24}**

HEARING ON SENATE BILL 96

Sponsor: Sen. Spook Stang, SD 36, presented SB 96. He explained the bill dealt with zoning. The bill could be called the in-fill bill. It changes some of the requirements to zoning protests to make it easier for development to be inside of the city or inside of areas rather than provide for the sprawl that exists today. The EQC found that the development of areas where services already exist is usually more cost effective than random development and concluded the development in and around urban areas should be encouraged. They also concluded there are a number of disincentives to develop in and around urban areas including some outdated zoning regulations. Traditional zoning regulations can sometimes discourage cluster development or other innovative designs because they limit density or separate different types of land uses. He discussed amendments put on by the Senate. **EXHIBIT(nah52a09) {Tape : 1; Side : B; Approx. Time Counter : 23 - 28.3}**

Proponents: Jean Marie Songney, representing the Growth Management Subcommittee from EQC, said the subcommittee tried to address those situations where one or two people could protest a zoning change and it would take a huge, super majority to override that. It took 75% prior to this change to override what one person may bring up as a protest. This will increase the number of people that would have to protest a zoning change and lowers the threshold over the number of people on the zoning body

that could override that. It makes it a little bit easier to do in-fill development. She pointed out the concern that came up in the Senate was that people who were absent from the governing body were essentially a no vote. They wanted to have voting members present. She described amendments and the reasoning behind them. **{Tape : 1; Side : B; Approx. Time Counter : 28.3}**

Lee Arbuckle, representing the League of Women Voters, spoke in favor of the bill. He presented written testimony.

EXHIBIT(nah52a10)

Informational Witness: Kirwin Jensen, Planning Director for the City of Billings, presented written testimony and charts. He explained the quadrant method used by the City of Billings.

EXHIBIT(nah52a11) He suggested an amendment to leave the 20% requirement intact and require 2/3 of the city council to overthrow a valid protest rather than just 3/5 as proposed.

{Tape : 1; Side : B; Approx. Time Counter : 34.5 42.9}

Steve Snezik, representing the Montana Association of Realtors, spoke in support of the bill. He stated if we want to prevent urban sprawl we need to encourage in-fill development, which cannot be done without a zone change. This bill makes a zone change easier. A zone change should be hard but it shouldn't be impossible. A developer would follow the path of least resistance. If in-fill development is close to impossible a developer will say forget it and move out into the county. **{Tape : 1; Side : B; Approx. Time Counter : 43 - 44.2}**

Mike Kadas, Mayor of Missoula, supported the bill as written. He pointed out the bill did four things. It raises the trigger, it lowers the hurdle from 3/4. 3/4 makes it nearly impossible. When you don't get good proposals because developers know they are going to go through this tortuous process and probably get it killed in the end so they don't even make proposals. He suggested changing voting members to members present and voting. He described the problems with current law where a member might not be present and then they are counted as a no vote. The quadrants issue is confusing, nebulous and interpreted differently by different cities. The bill would encourage in-fill. A neighborhood is larger than the area within 150 foot from a parcel. This takes some power away from essentially one neighbor. One neighbor can trigger a protest. A property owner brings in the proposal. They have become so restricted because of this law that they do not have a reasonable ability to do what they like to with their property. There needs to be some limits but now the limits don't allow us even to try. **{Tape : 1; Side : B; Approx. Time Counter : 43 - 47.8}**

Byron Roberts, Montana Building Industry Association, said that currently one adjoining neighbor could make it virtually impossible to enact a zone change. Current provisions discourage increased densities in urban areas and promote sprawl. Modifications of the 2/3 rule will also provide incentives for urban in-fill. Housing developments in and contiguous to urban areas should be encouraged because services can be provided more efficiently in urban settings. HB 96 will also remove barriers to the creation of planned unit developments in some communities in Montana. In order to create a planned unit development a zone change is required which now is virtually impossible. Planned unit developments allow innovative urban design coupled with increased densities and thereby providing housing affordability. **{Tape : 1; Side : B; Approx. Time Counter : 47.8 - 48.8}**

Alec Hanson, Montana League of Cities and Towns, spoke in favor of the bill. He said during the League's annual conference the bill was debated and supported. Zoning changes should be difficult but not impossible. The idea of encouraging in-fill development and allowing people to do what they want with their property is a basic principle. **{Tape : 1; Side : B; Approx. Time Counter : 48.9 - 49.5}**

Opponents: Chris Gingerelli, President of the Missoula City Council and representing the Missoula City Council, spoke in opposition to the bill. She presented written testimony. **EXHIBIT(nah52a12) EXHIBIT(nah52a13)** She pointed out the changes would make it easier for a potential minority membership of city councils and commissions to impose their will upon the public. She read the petition for the record. **{Tape : 1; Side : B; Approx. Time Counter : 49.5 - 50.2}**

Lou Ann Crowley, a member of the Missoula City Council, spoke in opposition to the bill. She described her personal experience of a proposal to her neighborhood that had strong opposition but they could not make the 40%. People would feel that they could not participate in a meaningful way in decisions that involve their property. She believed changes coming meant people would have to move in a little bit closer, move over to make room. Their rights should be protected regarding decisions that shape their lives, their property rights and their future property values. She believed SB 96 was a short sighted attempt to stem urban sprawl and the consequence would be to weaken citizen rights to be involved in determining the future of their neighborhoods. **{Tape : 2; Side : A; Approx. Time Counter : 1 - 4.2}**

Julia Polido, representing Don't Gamble with the Future, spoke against the bill. She said it has been impossible to oppose

casinos in residential areas even with the current regulations. She pointed out a smaller number of members on the commission could be making a decision for the community. **{Tape : 2; Side : A; Approx. Time Counter : 4 - 7.2}**

Jack Doty, representing University Area Homeowners, spoke against the bill. He pointed out there were people moving into the suburbs as urban extension not sprawl. He distributed a handout regarding adverse effects on urban neighborhoods.

EXHIBIT(nah52a14) He described how easy it was to get proposals passed through the city council when only a quorum was present. This bill would give the governing body more power, more central government. This promotes in-fill, filling up every empty space around and then there is no open space. This promotes in-fill, density and crowded areas, and threatens the purpose of residential areas. Population density and crime rates are correlated. He distributed letters in opposition to the bill.

EXHIBIT(nah52a15), EXHIBIT(nah52a16), EXHIBIT(nah52a17)

Bill Clarke, representing Missoula Neighborhood Network, presented written testimony against the bill. **EXHIBIT(nah52a18)**

Informational Witness: James Carculous, a resident of the University District in Missoula, testified. He said he was a strong growth management advocate and also a property rights advocate. He read a letter to the editor from the Missoulian which stated the growth management plan could be arbitrarily overruled by 20% of the adjacent property owners on any zoning issue. Changing the trigger mechanism to 40% of the adjacent owners could only succeed if the subdivision and growth management statutes were overhauled. A suggestion would be if the zoning protest bill could include a mechanism to acquire property through a conservation special improvement district if this is impacting their particular properties. If this measure stands alone without any accompanying legislation then it is a disservice to private property owners who are impacted by zoning changes. He made suggestions such as clarifying zoning districts. **{Tape : 2; Side : A; Approx. Time Counter : 20.7 - 26.5}**

Craig Sweet, a private citizen and former member of the Missoula City Council, spoke against the bill. He said this was more than just an in-fill bill. He described a casino project that would take 40% of the property owners in the area to override. He pointed out the bill did not guarantee quality development or innovative development. In order to get good quality development you need incentives to get the developer to sit down with the neighbor to discuss their problems and their concerns. He described design standards that would help guarantee a quality

development. He asked the committee when considering changes to make in-fill development easier to keep in mind there is not a support system in all the communities to guarantee the quality of the in-fill development. {Tape : 2; Side : A; Approx. Time Counter : 26.5 - 32.4}

Questions from Committee Members and Responses: {Tape : 2; Side : A; Approx. Time Counter : 33 - 56; Comments: members discussed amendment suggestions}

Closing by Sponsor: Sen. Stang closed. He asked that options be considered.

HEARING ON SENATE BILL 235

Sponsor: Sen. Jack Wells, SD 14, presented SB 235. He said the bill would help preserve the long term integrity of some of the most important municipal water rights and water supplies in the state. The bill is limited to certain water rights considered A-Closed. Municipalities will eventually need these waters. The bill does not give preference to municipal water rights like some other states have done. These rights could still be challenged if the municipalities did not do anything that indicated their future plan to use these water rights, but if they met some of the criteria then it was indicative of their intent to use those waters. The long term is the concern due to population growth and treatment of the water and changes in regulatory requirements and public need, sometimes unpredictable court decisions. This is why a certain level of protection was felt appropriate for these systems. {Tape : 2; Side : B; Approx. Time Counter : .5 - 6.6}

Proponents: Arvid Hiller, representing Mountain Water Company of Missoula, Montana, was in favor of the bill. He had written testimony. EXHIBIT(nah52a19) {Tape : 2; Side : B; Approx. Time Counter : 6.6 - 13.4}

Carl Stetzner, Chief Executive for Anaconda-Deer Lodge County, spoke as a proponent. He presented written testimony regarding their need for water. EXHIBIT(nah52a20)

Phil Forbes, Director of Public Works for Bozeman, spoke as a proponent of the bill. He described the water treatment process and the need for future planning. {Tape : 2; Side : B; Approx. Time Counter : 14.7}

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN BILL TASH**, on March 10, 1999 at 3:00 P.M., in Room 437 Capitol.

ROLL CALL

Members Present:

Rep. Bill Tash, Chairman (R)
Rep. Hal Harper, Vice Chairman (D)
Rep. Cindy Younkin, Vice Chairman (R)
Rep. Aubyn A. Curtiss (R)
Rep. Rick Dale (R)
Rep. Bill Eggers (D)
Rep. Ron Erickson (D)
Rep. David Ewer (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Dan McGee (R)
Rep. Douglas Mood (R)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Bob Raney (D)
Rep. Bob Story (R)
Rep. Jay Stovall (R)
Rep. Carley Tuss (D)
Rep. Doug Wagner (R)

Members Excused: Rep. Rod Bitney (R)

Members Absent: None.

Staff Present: Todd Everts, Legislative Branch
Deb Thompson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 276, SB 429, SB 371, SB
383, 3/5/1999
Executive Action: SB 235, SB 97, SB 96

Rep. McGee **MOVED TO TABLE** the bill. The motion **FAILED** on a 10-10 vote.

Rep. Eggers **MOVED** the Kadas Amendment. The motion **FAILED**.

Rep. Hurdle **MOVED DO CONCUR** SB 97. The question was called on the bill. The motion **PASSED** 11-9 on a roll call vote.

EXECUTIVE ACTION ON SENATE BILL 96

Rep. Raney pointed out this bill was studied for two years in the EQC process. He **MOVED** to amend line 16 and strike the word "voting" and reinsert "all". Two people could vote. This way it would take 3/5 of all the members of the council to vote.

EXHIBIT(nah54a06) EXHIBIT(nah54a07) {Tape : 2; Side : B; Approx. Time Counter : 15.3}

Rep. McGee pointed out the suggestion by Kerwin Jensen was 2/3 not 3/5 and also 20% on line 17. He asked if these amendments should be voted separately.

The question was called on the Raney amendment that referred to the voting members. The motion **PASSED** unanimously.

Rep. McGee **MOVED** the bill as amended. He offered an amendment on line 15, to change the 3/5 to 2/3 and on line 17, change the 40% to 20%. Rep. Younkin asked that these be segregated to vote on them.

The question was called on striking 3/5 and inserting 2/3. Rep. Raney pointed out these changes would mean minority rules.
{Tape : 2; Side : B; Approx. Time Counter : 15.3 - 19.1}

The question was called on the 2/3 rather than 3/5. The motion **PASSED** 13-7.

The question was called on the 20% from the 40%. Rep. McGee explained what Kerwin Jensen was trying to show with the diagrams, was the bill was crafted so the ambiguities would clear up. The 20% would eliminate the quadrants and makes it easier to protest.

The question was called on the 20% amendment. The motion **PASSED** 18-2 with Reps. Tuss and Ohs voting no.

The question was called on the bill as amended. The motion **PASSED** with four no votes by Reps. McGee, Wagner, Hurdle and Ohs

voting no. {Tape : 2; Side : B; Approx. Time Counter : 19.1 -
23.3}

ADJOURNMENT

Adjournment: 6:44 P.M.

REP. BILL TASH, Chairman

DEB THOMPSON, Secretary

BT/DT

EXHIBIT(nah54aad)

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

FREE CONFERENCE COMMITTEE SB 96 AND SB 97

Call to Order: By **SENATOR DON HARGROVE**, on April 12, 1999 at
8:35 A.M., in Room 331 Capitol.

ROLL CALL

Members Present:

Sen. Don Hargrove
Sen. Lorents Grosfield
Sen. Barry Stang
Rep. Rod Bitney
Rep. Mark Noennig
Rep. Ron Erickson (SB 96)
Rep. Carolyn Squires (SB 97)

Members Excused: None.

Members Absent: None.

Staff Present: Phoebe Olson, Secretary
Mary Vandembosch, Legislative Services Division

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Conference Committee on SB 96 and SB 97

SB 96

SENATOR HARGROVE, opened the meeting and asked **SENATOR STANG** to give an explanation of what needed to be done.

SENATOR STANG, explained that SB 96 was a product of two years of study by the Environmental Quality Council Growth Committee. He said the purpose of the bill was to make it easier to override zoning protests. He said the bill was amended in Senate Committee to make it 3/5 of the members voting. He thought the House change to 2/3 would make everyone fairly happy.

He said the other issue was the number of people needed for an override. He hoped they could deal with that amendment by moving it back to 30%. He maintained those were the only House amendments he wanted to discuss.

SENATOR HARGROVE, asked about the amendment that dealt with voting. He wondered if there was anyone on the council who didn't vote.

REPRESENTATIVE NOENNIG, said he thought the amendment looked at who was present at the council and who was not.

SENATOR STANG, agreed.

REPRESENTATIVE NOENNIG, said know it was just a question of the total members of the city council being present and voting or not being present.

SENATOR STANG, thought it was a decent compromise, and didn't have a problem with it.

SENATOR HARGROVE, mentioned that there were people there to answer questions.

REPRESENTATIVE BITNEY, asked for clarification on line 16 where it said "all the members".

SENATOR STANG, said the problem was no one seemed to know. He said all the councils he had talked to, do not allow proxies. He said that 2/3 of the voting members, meant 2/3 of those present

and voting. He thought the way the House has worded it took care of the concerns.

SENATOR HARGROVE, explained things to **SENATOR GROSFIELD**.

REPRESENTATIVE BITNEY, asked if the Realtors had any concerns regarding the amendments.

Steve Snezik, conveyed he liked the amendments.

REPRESENTATIVE ERICKSON, said he thought 30% might work but had heard of a specific example that gave him pause about it. He wondered if Kirwin Jensen could talk about that.

Kirwin Jensen, Planning Director, Billings, gave the committee a handout that explained his concerns. **EXHIBIT(1)**

SENATOR STANG, said Mr. Jensen's examples included 20% and 40% but did not include a 40% example. It appeared to him if you reduced the 40% example you were still looking at the same property owners as under the 20% example.

Kirwin Jensen, said it would vary from example to example.

REPRESENTATIVE NOENNIG, said in looking at the examples, the way he understood it under current law, a 5% protest was a valid protest. He asked if the sponsors intention was to raise the bar as far as the bill had.

SENATOR STANG, said he somewhat agreed with the analysis. He remarked under current law that there were differences to how the quadrants were drawn.

REPRESENTATIVE NOENNIG, said he thought they had gone a long ways with the 40%. He wondered if that really was the intention.

SENATOR GROSFIELD, said this was a Missoula verses Billings issue. He said there was a lot of dynamics involved. He deferred to Mary Vandembosch.

Mary Vandembosch, said the EQC heard testimony that with a 20% figure one property owner could protest a change and with a 3/4 vote to override that protest they heard testimony that it was

difficult to change zoning regulations without a barrier to proposals to promote in fill developments. She said they did not get into detail what the protest area would entail.

SENATOR GROSFIELD, said the problem was that 3/4 of a big board would make it almost have to be a unanimous vote.

SENATOR HARGROVE, considered EQC one of the more deliberative groups and he didn't like to overturn anything they did. He asked what the intentions of the committee were.

REPRESENTATIVE NOENNIG, said it seemed to him like amendment 1 and 2 had to balance with the percentage on amendment 3.

Motion: **SEN. STANG** moved **AMENDMENT NUMBER THREE BE CHANGED FROM 20% TO 30%.**

REPRESENTATIVE NOENNIG, said he wanted to make sure that it was necessary to raise the bar that high.

SENATOR STANG, said he thought it was the EQC's intention to make this somewhat attainable, but something that couldn't be done too easily. He thought by moving to 30% you have done that.

REPRESENTATIVE ERICKSON, wondered if 25% would be a friendly amendment. He thought it would go specifically to the example in Billings.

SENATOR STANG, said he would rather have 30% but 25% would be fine.

Motion: **REPRESENTATIVE ERICKSON** made a substitute motion that **AMENDMENT 3 GO FROM 20% TO 25%.**

REPRESENTATIVE NOENNIG, asked what Mr. Jensen thought about going to 25%.

Kirwin Jensen, said part of that would be public right-of-way in many cases. He said it could be possible that someone might not own 25% of the property in the area because of the right-of-way.

REPRESENTATIVE NOENNIG, asked what his conclusion was then.

Kirwin Jensen, said he felt that 20% was the fairest number.

SENATOR STANG, said it appeared that 25% would be better than 20% because of the right-of-way. He said the city of Missoula would rather have 40%. He thought that 25% was a good compromise.

Vote: Motion carried unanimously.

{Tape : 1; Side : A; Approx. Time Counter : 905; Comments :
Committee on SB 97}

SB 97

SENATOR STANG, explained he wanted to strip the House amendments. He said the reason he did not like this was because in current law you did not have to have a vote on a master plan, and the House put a mandatory vote in. He said this bill was trying to get people involved in the front of the process.

SENATOR HARGROVE, asked if any of the House members were involved in the amendment.

REPRESENTATIVE NOENNIG, said it was put on the bill on the House floor.

SENATOR HARGROVE, said it looked like there was the possibility they did not understand what the amendment did.

REPRESENTATIVE NOENNIG, said that they did intend to make the vote mandatory. He explained the arguments that were made in the House, and that they were concerned mostly with property rights. He thought there was a provision that allowed a referendum under certain circumstances.

Ann Hedges, Environmental Information Center, said the referendum started on page 11, line 30, and went on to the next page.

REPRESENTATIVE NOENNIG, added that there was some discussion that you shouldn't vote for the bill even with the amendment, because it would be stripped off in the Senate.